

SECTION 6

CHAPTER 38—MINORS
ARTICLE 23—REVISED
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38-2361. Sentencing alternatives. (a) Upon adjudication as a juvenile offender pursuant to K.S.A. 2006 Supp. 38-2356, and amendments thereto, modification of sentence pursuant to K.S.A. 2006 Supp. 38-2367, and amendments thereto, or violation of a condition of sentence pursuant to K.S.A. 2006 Supp. 38-2368, and amendments thereto, and subject to subsection (a) of K.S.A. 2006 Supp. 38-2365, and amendments thereto, the court may impose one or more of the following sentencing alternatives. In the event that any sentencing alternative chosen constitutes an order authorizing or requiring removal of the juvenile from the juvenile's home and such findings either have not previously been made or the findings are not or may no longer be current, the court shall make determinations as required by K.S.A. 2006 Supp. 38-2334 and 38-2335, and amendments thereto.

(1) Place the juvenile on probation through court services or community corrections for a fixed period, subject to terms and conditions the court deems appropriate consistent with juvenile justice programs in the community.

(2) Order the juvenile to participate in a community based program available in such judicial district subject to the terms and conditions the court deems appropriate. This alternative shall not be ordered with the alternative in paragraph (12) and when ordered with the alternative in paragraph (10) shall constitute a recommendation. Requirements pertaining to child support may apply if custody is vested with other than a parent.

(3) Place the juvenile in the custody of a parent or other suitable person, subject to terms and conditions consistent with juvenile justice programs in the community. This alternative shall not be ordered with the alternative in paragraph (10) or (12). Requirements pertaining to child support may apply if custody is vested with other than a parent.

(4) Order the juvenile to attend counseling, educational, mediation or other sessions, or to undergo a drug evaluation pursuant to subsection (b).

(5) Suspend or restrict the juvenile's driver's license or privilege to operate a motor vehicle on the

streets and highways of this state pursuant to subsection (c).

(6) Order the juvenile to perform charitable or community service work.

(7) Order the juvenile to make appropriate reparation or restitution pursuant to subsection (d).

(8) Order the juvenile to pay a fine not exceeding \$1,000 pursuant to subsection (e).

(9) Place the juvenile under a house arrest program administered by the court pursuant to K.S.A. 21-4603b, and amendments thereto.

(10) Place the juvenile in the custody of the commissioner as provided in K.S.A. 2006 Supp. 38-2365, and amendments thereto. This alternative shall not be ordered with the alternative in paragraph (3) or (12). Except for a mandatory drug and alcohol evaluation, when this alternative is ordered with alternatives in paragraphs (2), (4) and (9), such orders shall constitute a recommendation by the court. Requirements pertaining to child support shall apply under this alternative.

(11) Commit the juvenile to a sanctions house for a period no longer than 28 days subject to the provisions of subsection (f).

(12) Commit the juvenile directly to the custody of the commissioner for a period of confinement in a juvenile correctional facility and a period of aftercare pursuant to K.S.A. 2006 Supp. 38-2369, and amendments thereto. The provisions of K.S.A. 2006 Supp. 38-2365, and amendments thereto, shall not apply to juveniles committed pursuant to this provision. This alternative may be ordered with the alternative in paragraph (7). Requirements pertaining to child support shall apply under this alternative.

(b) If the court orders the juvenile to attend counseling, educational, mediation or other sessions, or to undergo a drug and alcohol evaluation pursuant to subsection (a)(4), the following provisions apply:

(1) The court may order the juvenile offender to participate in counseling or mediation sessions or a program of education, including placement in an alternative educational program approved by a local school board. The costs of any counseling or mediation may be assessed as expenses in the case. No mental health center shall charge a fee for court-ordered counseling greater than what the center would have charged the person receiving the counseling if the person had requested counseling on the person's own initiative. No mediator shall charge a fee for court-ordered mediation greater than what the mediator would have charged the person

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participating in the mediation if the person had requested mediation on the person's own initiative. Mediation may include the victim but shall not be mandatory for the victim; and

(2) if the juvenile has been adjudicated to be a juvenile by reason of a violation of a statute that makes such a requirement, the court shall order and, if adjudicated for any other offense, the court may order the juvenile to submit to and complete a drug and alcohol evaluation by a community-based drug and alcohol safety action program certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not to exceed the fee established by that statute for such evaluation. The court may waive the mandatory evaluation if the court finds that the juvenile completed a drug and alcohol evaluation, approved by the community-based alcohol and drug safety action program, within 12 months before sentencing. If the evaluation occurred more than 12 months before sentencing, the court shall order the juvenile to resubmit to and complete the evaluation and program as provided herein. If the court finds that the juvenile and those legally liable for the juvenile's support are indigent, the court may waive the fee. In no event shall the fee be assessed against the commissioner or the juvenile justice authority nor shall the fee be assessed against the secretary of social and rehabilitation services or the department of social and rehabilitation services if the juvenile is in the secretary's care, custody and control.

(c) If the court orders suspension or restriction of a juvenile offender's driver's license or privilege to operate a motor vehicle on the streets and highways of this state pursuant to subsection (a)(5), the following provisions apply:

(1) The duration of the suspension ordered by the court shall be for a definite time period to be determined by the court. Upon suspension of a license pursuant to this subsection, the court shall require the juvenile offender to surrender the license to the court. The court shall transmit the license to the division of motor vehicles of the department of revenue, to be retained until the period of suspension expires. At that time, the licensee may apply to the division for return of the license. If the license has expired, the juvenile offender may apply for a new license, which shall be issued promptly upon payment of the proper fee and satisfaction of other conditions established by law for obtaining a license unless another suspension or revocation of the juvenile offender's privilege to operate a motor

vehicle is in effect. As used in this subsection, "highway" and "street" have the meanings provided by K.S.A. 8-1424 and 8-1473, and amendments thereto. Any juvenile offender who does not have a driver's license may have driving privileges revoked. No Kansas driver's license shall be issued to a juvenile offender whose driving privileges have been revoked pursuant to this section for a definite time period to be determined by the court; and

(2) in lieu of suspending a juvenile offender's driver's license or privilege to operate a motor vehicle on the highways of this state, the court may enter an order which places conditions on the juvenile offender's privilege of operating a motor vehicle on the streets and highways of this state, a certified copy of which the juvenile offender shall be required to carry any time the juvenile offender is operating a motor vehicle on the streets and highways of this state. The order shall prescribe a definite time period for the conditions imposed. Upon entering an order restricting a juvenile offender's license, the court shall require the juvenile offender to surrender such juvenile offender's license to the court. The court shall transmit the license to the division of vehicles, together with a copy of the order. Upon receipt thereof, the division of vehicles shall issue without charge a driver's license which shall indicate on its face that conditions have been imposed on the juvenile offender's privilege of operating a motor vehicle and that a certified copy of the order imposing the conditions is required to be carried by the juvenile offender when operating a motor vehicle on the streets and highways of this state. If the juvenile offender is a nonresident, the court shall cause a copy of the order to be transmitted to the division and the division shall forward a copy of it to the motor vehicle administrator of the juvenile offender's state of issuance. The court shall furnish to any juvenile offender whose driver's license has had conditions imposed on it under this section a copy of the order, which shall be recognized as a valid Kansas driver's license until the division issues the restricted license provided for in this subsection. Upon expiration of the period of time for which conditions are imposed pursuant to this subsection, the juvenile offender may apply to the division for the return of the license previously surrendered by the juvenile offender. In the event the license has expired, the juvenile offender may apply to the division for a new license, which shall be issued

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immediately by the division upon payment of the proper fee and satisfaction of the other conditions established by law unless such juvenile offender's privilege to operate a motor vehicle on the streets and highways of this state has been suspended or revoked prior thereto. If any juvenile offender violates any of the conditions imposed under this subsection, the juvenile offender's driver's license or privilege to operate a motor vehicle on the streets and highways of this state shall be revoked for a period as determined by the court in which the juvenile offender is convicted of violating such conditions.

(d) The following provisions apply to the court's determination of whether to order reparation or restitution pursuant to subsection (a)(7):

(1) The court shall order the juvenile to make reparation or restitution to the aggrieved party for the damage or loss caused by the juvenile offender's offense unless it finds compelling circumstances that would render a plan of reparation or restitution unworkable. If the court finds compelling circumstances that would render a plan of reparation or restitution unworkable, the court shall enter such findings with particularity on the record. In lieu of reparation or restitution, the court may order the juvenile to perform charitable or social service for organizations performing services for the community; and

(2) restitution may include, but shall not be limited to, the amount of damage or loss caused by the juvenile's offense. Restitution may be made by payment of an amount fixed by the court or by working for the parties sustaining loss in the manner ordered by the court. An order of monetary restitution shall be a judgment against the juvenile that may be collected by the court by garnishment or other execution as on judgments in civil cases. Such judgment shall not be affected by the termination of the court's jurisdiction over the juvenile offender.

(e) If the court imposes a fine pursuant to subsection (a)(8), the following provisions apply:

(1) The amount of the fine may not exceed \$1,000 for each offense. The amount of the fine should be related to the seriousness of the offense and the juvenile's ability to pay. Payment of a fine may be required in a lump sum or installments;

(2) in determining whether to impose a fine and the amount to be imposed, the court shall consider that imposition of a fine is most appropriate in cases where the juvenile has derived pecuniary gain from

the offense and that imposition of a restitution order is preferable to imposition of a fine; and

(3) any fine imposed by court shall be a judgment against the juvenile that may be collected by the court by garnishment or other execution as on judgments in civil cases. Such judgment shall not be affected by the termination of the court's jurisdiction over the juvenile.

(f) If the court commits the juvenile to a sanctions house pursuant to subsection (a)(11), the following provisions shall apply:

(1) The court may order commitment for up to 28 days for the same offense or violation of sentencing condition. The court shall review the commitment every seven days and, may shorten the initial commitment or, if the initial term is less than 28 days, may extend the commitment;

(2) if, in the sentencing order, the court orders a sanctions house placement for a verifiable probation violation and such probation violation occurs, the juvenile may immediately be taken to a sanctions house and detained for no more than 48 hours, excluding Saturdays, Sundays and holidays, prior to court review of the placement. The court and all parties shall be notified of the sanctions house placement; and

(3) a juvenile over 18 years of age and less than 23 years of age at sentencing shall be committed to a county jail, in lieu of a sanctions house, under the same time restrictions imposed by paragraph (1), but shall not be committed to or confined in a juvenile detention facility.

(g) Any order issued by the judge pursuant to this section shall be in effect immediately upon entry into the court's minutes.

(h) In addition to the requirements of K.S.A. 2006 Supp. 38-2373, and amendments thereto, if a person is under 18 years of age and convicted of a felony or adjudicated as a juvenile offender for an offense if committed by an adult would constitute the commission of a felony, the court shall forward a signed copy of the journal entry to the commissioner within 30 days of final disposition.

(i) Except as further provided, if a juvenile has been adjudged to be a juvenile offender for an offense that if committed by an adult would constitute the commission of: (1) Aggravated trafficking, as defined in K.S.A. 2005 Supp. 21-3447, and amendments thereto, if the victim is less than 14 years of age; (2) rape, as defined in subsection (a)(2) of K.S.A. 21-3502, and

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amendments thereto; (3) aggravated indecent liberties with a child, as defined in subsection (a)(3) of K.S.A. 21-3504, and amendments thereto; (4) aggravated criminal sodomy, as defined in subsection (a)(1) or (a)(2) of K.S.A. 21-3506, and amendments thereto; (5) promoting prostitution, as defined in K.S.A. 21-3513, and amendments thereto, if the prostitute is less than 14 years of age; (6) sexual exploitation of a child, as defined in subsection (a)(5) or (a)(6) of K.S.A. 21-3516, and amendments thereto; or (7) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, of an offense defined in parts (1) through (6); the court shall issue an order prohibiting the juvenile from attending the attendance center that the victim of the offense attends. If only one attendance center exists, for which the victim and juvenile are eligible to attend, in the school district where the victim and the juvenile reside, the court shall hear testimony and take evidence from the victim, the juvenile, their families and a representative of the school district as to why the juvenile should or should not be allowed to remain at the attendance center attended by the victim. After such hearing, the court may issue an order prohibiting the juvenile from attending the attendance center that the victim of the offense attends.

(j) The sentencing hearing shall be open to the public as provided in K.S.A. 2006 Supp. 38-2353, and amendments thereto.

History: L. 2006, ch. 169, § 61; Jan. 1, 2007.

Source or Prior Law:
38-1663.

38-2362. Orders relating to parents. (a) When sentencing a juvenile offender, the court may order a juvenile offender's parent to participate in counseling, mediation sessions or an alcohol and drug evaluation and treatment program ordered as part of the juvenile offender's sentence under K.S.A. 2006 Supp. 38-2361, and amendments thereto, or to participate in parenting classes.

(1) Upon entering an order requiring a juvenile offender's parent to attend counseling sessions or mediation, the court shall give the parent notice of the order. The notice shall inform the parent of the parent's right to request a hearing within 10 days after entry of the order and the parent's right to employ an attorney to represent the parent at the hearing or, if the parent is financially unable to

employ an attorney, the parent's right to request the court to appoint an attorney to represent the parent.

(2) If the parent does not request a hearing within 10 days after entry of the order, the order shall take effect at that time.

(3) If the parent requests a hearing, the court shall set the matter for hearing and, if requested, shall appoint an attorney to represent the parent. The expense and fees of the appointed attorney may be allowed and assessed as provided by K.S.A. 2006 Supp. 38-2306, and amendments thereto.

(b) In addition to any other orders provided for by this section, the parent of a juvenile offender may be held responsible for the costs of sanctions or the support of the juvenile offender as follows:

(1) The board of county commissioners of a county may provide by resolution that the parent of any juvenile offender placed under a house arrest program pursuant to subsection (a)(9) of K.S.A. 2006 Supp. 38-2361, and amendments thereto, shall be required to pay to the county the cost of such house arrest program. The board of county commissioners shall prepare a sliding financial scale based on the ability of the parent to pay for such a program.

(2) If child support has been requested and a parent has a duty to support the juvenile offender, the court may order, and when custody is placed with the commissioner shall order, one or both parents to pay child support. The court shall determine, for each parent separately, whether the parent already is subject to an order to pay support for the juvenile. If the parent currently is not ordered to pay support for the juvenile and the court has personal jurisdiction over the parent, the court shall order the parent to pay child support in an amount determined under K.S.A. 2006 Supp. 38-2319, and amendments thereto. Except for good cause shown, the court shall issue an immediate income withholding order pursuant to K.S.A. 23-4,105 et seq., and amendments thereto, for each parent ordered to pay support under this subsection, regardless of whether a payor has been identified for the parent. A parent ordered to pay child support under this subsection shall be notified, at the hearing or otherwise, that the child support order may be registered pursuant to K.S.A. 2006 Supp. 38-2321, and amendments thereto. The parent also shall be informed that, after registration, the income withholding order may be served on the parent's employer without further notice to the parent and the child support order may

be enforced by any method allowed by law. Failure to provide this notice shall not affect the validity of the child support order.

History: L. 2006, ch. 169, § 62; Jan. 1, 2007.

Source or Prior Law:
38-1663.

38-2363. Duty of parents and others to aid in enforcement of court orders; failure, contempt. A parent, or adult with whom a juvenile resides, may be ordered by the court to report any probation violations or conditional release contract violations, aid in enforcing terms and conditions of probation or conditional release or other orders of the court or any of the above. Any person placed under an order to report any probation violations or conditional release contract violations, aid in enforcing terms and conditions of probation or conditional release or other orders of the court or any of the above who fails to do so may be proceeded against for indirect contempt of court as provided in K.S.A. 20-1204a et seq., and amendments thereto.

History: L. 2006, ch. 169, § 63; Jan. 1, 2007.

Source or Prior Law:
38-1668.

38-2364. Extended jurisdiction juvenile prosecution; violating conditions of stayed juvenile sentence; hearing. (a) If an extended jurisdiction juvenile prosecution results in a guilty plea or finding of guilt, the court shall:

(1) Impose one or more juvenile sentences under K.S.A. 2006 Supp. 38-2361, and amendments thereto; and

(2) impose an adult criminal sentence, the execution of which shall be stayed on the condition that the juvenile offender not violate the provisions of the juvenile sentence and not commit a new offense.

(b) When it appears that a person sentenced as an extended jurisdiction juvenile has violated the conditions of the juvenile sentence or is alleged to have committed a new offense, the court, without notice, may revoke the stay and probation and direct that the juvenile offender be immediately taken into custody and delivered to the secretary of corrections pursuant to K.S.A. 21-4621, and amendments thereto. The court shall notify the juvenile offender and such juvenile offender's attorney of record, in writing by personal service, as provided in K.S.A. 60-303, and amendments thereto, or certified mail, return receipt requested, of the reasons alleged to

exist for revocation of the stay of execution of the adult sentence. If the juvenile offender challenges the reasons, the court shall hold a hearing on the issue at which the juvenile offender is entitled to be heard and represented by counsel. After the hearing, if the court finds by substantial evidence that conditions of the juvenile's sentence have been violated, the court shall revoke the juvenile sentence and order the imposition of the adult sentence previously ordered pursuant to subsection (a)(2). Upon such finding, the juvenile's extended jurisdiction status is terminated, and juvenile court jurisdiction is terminated. The ongoing jurisdiction for any adult sanction, other than the commitment to the department of corrections, is with the adult court. The juvenile offender shall be credited for time served in a juvenile correctional or detention facility on the juvenile sentence as service on any authorized adult sanction.

(c) Upon becoming 18 years of age, any juvenile who has been sentenced pursuant to subsection (a) and is serving the juvenile sentence, may move for a court hearing to review the sentence. If the sentence is continued, the court shall set a date of further review in no later than 36 months.

History: L. 2006, ch. 169, § 64; Jan. 1, 2007.

Source or Prior Law:
38-16,126.

38-2365. Juvenile offender placed in custody of commissioner; placement; permanency plan; progress report to court; hearing; notification; termination of parental rights. (a) When a juvenile offender has been placed in the custody of the commissioner, the commissioner shall have a reasonable time to make a placement. If the juvenile offender has not been placed, any party who believes that the amount of time elapsed without placement has exceeded a reasonable time may file a motion for review with the court. In determining what is a reasonable amount of time, matters considered by the court shall include, but not be limited to, the nature of the underlying offense, efforts made for placement of the juvenile offender and the availability of a suitable placement. The commissioner shall notify the court and the juvenile offender's parent, in writing, of the initial placement and any subsequent change of placement as soon as the placement has been accomplished. The notice to the juvenile offender's parent shall be sent to such parent's last known address or addresses. The court

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shall have no power to direct a specific placement by the commissioner, but may make recommendations to the commissioner. The commissioner may place the juvenile offender in an institution operated by the commissioner, a youth residential facility or any other appropriate placement. If the court has recommended an out-of-home placement, the commissioner may not return the juvenile offender to the home from which removed without first notifying the court of the plan.

(b) If a juvenile is in the custody of the commissioner, the commissioner shall prepare and present a permanency plan at sentencing or within 30 days thereafter. If a permanency plan is already in place under a child in need of care proceeding, the court may adopt the plan under the present proceeding. The written permanency plan shall provide for reintegration of the juvenile into such juvenile's family or, if reintegration is not a viable alternative, for other permanent placement of the juvenile. Reintegration may not be a viable alternative when: (1) The parent has been found by a court to have committed murder in the first degree, K.S.A. 21-3401, and amendments thereto, murder in the second degree, K.S.A. 21-3402, and amendments thereto, capital murder, K.S.A. 21-3439, and amendments thereto, voluntary manslaughter, K.S.A. 21-3403, and amendments thereto, of a child or violated a law of another state which prohibits such murder or manslaughter of a child;

(2) the parent aided or abetted, attempted, conspired or solicited to commit such murder or voluntary manslaughter of a child;

(3) the parent committed a felony battery that resulted in bodily injury to the juvenile who is the subject of this proceeding or another child;

(4) the parent has subjected the juvenile who is the subject of this proceeding or another child to aggravated circumstances as defined in K.S.A. 38-1502, and amendments thereto;

(5) the parental rights of the parent to another child have been terminated involuntarily; or

(6) the juvenile has been in extended out-of-home placement as defined in K.S.A. 2006 Supp. 38-2202, and amendments thereto.

(c) If the juvenile is placed in the custody of the commissioner, the plan shall be prepared and submitted by the commissioner. If the juvenile is placed in the custody of a facility or person other than the commissioner, the plan shall be prepared and submitted by a court services officer. If the

permanency goal is reintegration into the family, the permanency plan shall include measurable objectives and time schedules for reintegration.

(d) During the time a juvenile remains in the custody of the commissioner, the commissioner shall submit to the court, at least every six months, a written report of the progress being made toward the goals of the permanency plan submitted pursuant to subsections (b) and (c) and the specific actions taken to achieve the goals of the permanency plan. If the juvenile is placed in foster care, the court may request the foster parent to submit to the court, at least every six months, a report in regard to the juvenile's adjustment, progress and condition. Such report shall be made a part of the juvenile's court social file. The court shall review the plan submitted by the commissioner and the report, if any, submitted by the foster parent and determine whether reasonable efforts and progress have been made to achieve the goals of the permanency plan. If the court determines that progress is inadequate or that the permanency plan is no longer viable, the court shall hold a hearing pursuant to subsection (e).

(e) When the commissioner has custody of the juvenile, a permanency hearing shall be held no more than 12 months after the juvenile is first placed outside such juvenile's home and at least every 12 months thereafter. Juvenile offenders who have been in extended out-of-home placement shall be provided a permanency hearing within 30 days of a request from the commissioner. The court may appoint a *guardian ad litem* to represent the juvenile offender at the permanency hearing. At each hearing, the court shall make a written finding whether reasonable efforts have been made to accomplish the permanency goal and whether continued out-of-home placement is necessary for the juvenile's safety.

(f) Whenever a hearing is required under subsection (e), the court shall notify all interested parties of the hearing date, the commissioner, foster parent and preadoptive parent or relatives providing care for the juvenile and hold a hearing. Individuals receiving notice pursuant to this subsection shall not be made a party to the action solely on the basis of this notice and opportunity to be heard. After providing the persons receiving notice an opportunity to be heard, the court shall determine whether the juvenile's needs are being adequately met; whether services set out in the permanency plan necessary for the safe return of the juvenile have

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been made available to the parent with whom reintegration is planned; and whether reasonable efforts and progress have been made to achieve the goals of the permanency plan.

(g) If the court finds reintegration continues to be a viable alternative, the court shall determine whether and, if applicable, when the juvenile will be returned to the parent. The court may rescind any of its prior dispositional orders and enter any dispositional order authorized by this code or may order that a new plan for the reintegration be prepared and submitted to the court. If reintegration cannot be accomplished as approved by the court, the court shall be informed and shall schedule a hearing pursuant to subsection (h). No such hearing is required when the parent voluntarily relinquishes parental rights or agree to appointment of a permanent guardian.

(h) When the court finds any of the following conditions exist, the county or district attorney or the county or district attorney's designee shall file a petition alleging the juvenile to be a child in need of care and requesting termination of parental rights pursuant to the Kansas code for care of children: (1) The court determines that reintegration is not a viable alternative and either adoption or permanent guardianship might be in the best interests of the juvenile;

(2) the goal of the permanency plan is reintegration into the family and the court determines after 12 months from the time such plan is first submitted that progress is inadequate; or

(3) the juvenile has been in out-of-home placement for a cumulative total of 15 of the last 22 months, excluding trial home visits and juvenile in runaway status.

Nothing in this subsection shall be interpreted to prohibit termination of parental rights prior to the expiration of 12 months.

(i) A petition to terminate parental rights is not required to be filed if one of the following exceptions is documented to exist: (1) The juvenile is in a stable placement with relatives;

(2) services set out in the case plan necessary for the safe return of the juvenile have not been made available to the parent with whom reintegration is planned; or

(3) there are one or more documented reasons why such filing would not be in the best interests of the juvenile. Documented reasons may include, but are not limited to: The juvenile has close emotional bonds with a parent which should not be broken; the

juvenile is 14 years of age or older and, after advice and counsel, refuses to be adopted; insufficient grounds exist for termination of parental rights; the juvenile is an unaccompanied refugee minor; or there are international legal or compelling foreign policy reasons precluding termination of parental rights.

History: L. 2006, ch. 169, § 65; Jan. 1, 2007.

Source or Prior Law:
38-1664.

38-2366. Juvenile offenders in custody of DOC; placement; notification to court; detainment; prohibition on admittance to juvenile correctional facility.

(a) When a juvenile offender who is under 16 years of age at the time of the sentencing, has been prosecuted and convicted as an adult or under the extended jurisdiction juvenile prosecution, and has been placed in the custody of the secretary of the department of corrections, the secretary shall notify the sheriff having the offender in custody to convey such juvenile offender at a time designated by the juvenile justice authority to a juvenile correctional facility. The commissioner shall notify the court, in writing, of the initial placement of the offender in the specific juvenile correctional facility as soon as the placement has been accomplished. The commissioner shall not permit the juvenile offender to remain detained in any jail for more than 72 hours, excluding Saturdays, Sundays and legal holidays, after the commissioner has received the written order of the court placing the offender in the custody of the commissioner. If such placement cannot be accomplished, the offender may remain in jail for an additional period of time, not exceeding 10 days, which is specified by the commissioner and approved by the court.

(b) A juvenile who has been prosecuted and convicted as an adult shall not be eligible for admission to a juvenile correctional facility. All other conditions of the offender's sentence imposed under this code, including restitution orders, may remain intact. The provisions of this subsection shall not apply to an offender who: (1) Is under 16 years of age at the time of the sentencing; (2) has been prosecuted as an adult or under extended juvenile jurisdiction; and (3) has been placed in the custody of the secretary of corrections, requiring admission to a juvenile correctional facility pursuant to subsection (a).

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History: L. 2006, ch. 169, § 66; Jan. 1, 2007.

Source or Prior Law:

38-16,111

38-2367. Modification of sentence. (a) At any time after the entry of an order of custody or placement of a juvenile offender, the court, upon the court's own motion or the motion of the commissioner or parent or any party, may modify the sentence imposed. Upon receipt of the motion, the court shall fix a time and place for hearing and provide notice to the movant and to the current custodian and placement of the juvenile offender and to each party to the proceeding. Except as established in subsection (b), after the hearing, if the court finds that the sentence previously imposed is not in the best interests of the juvenile offender, the court may rescind and set aside the sentence, and enter any sentence pursuant to K.S.A. 2006 Supp. 38-2361, and amendments thereto, except that a child support order which has been registered under K.S.A. 2006 Supp. 38-2321, and amendments thereto, may only be modified pursuant to K.S.A. 2006 Supp. 38-2321, and amendments thereto.

(b) If the court determines that it is in the best interests of the juvenile offender to be returned to the custody of the parent or parents, the court shall so order.

(c) The court shall rescind an order granting custody to a parent only if the court first finds probable cause that: (1)(A) The juvenile is likely to sustain harm if not immediately removed from the home;

(B) allowing the juvenile to remain in home is contrary to the welfare of the juvenile; or

(C) immediate placement of the juvenile is in the juvenile's best interest; and

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the juvenile from the juvenile's home or that an emergency exists which threatens the safety of the juvenile. The court shall state the basis of each finding.

(d) Any time within 60 days after a court has committed a juvenile offender to a juvenile correctional facility the court may modify the sentence and enter any other sentence, except that a child support order which has been registered under K.S.A. 2006 Supp. 38-2321, and amendments thereto, may only be modified pursuant to K.S.A. 2006 Supp. 38-2321, and amendments thereto.

(e) Any time after a court has committed a juvenile offender to a juvenile correctional facility, the court may, upon motion by the commissioner, modify the sentence and enter any other sentence if the court determines that:

(1) The medical condition of the juvenile justifies a reduction in sentence; or

(2) the juvenile's exceptional adjustment and habilitation merit a reduction in sentence.

History: L. 2006, ch. 169, § 67; Jan. 1, 2007.

Source or Prior Law:

38-1665, 38-16,131.

38-2368. Violation of condition of probation or placement. (a) If it is alleged that a juvenile offender has violated a condition of probation or of a court-ordered placement, the county or district attorney, the victim of the offense committed by the offender, the assigned court services officer or the current custodian and placement of the juvenile offender may file a report with the court describing the alleged violation. The court shall provide copies of the report to the parties to the proceeding. The court, upon the court's own motion or the motion of the commissioner or any party, shall set the matter for hearing and may issue a warrant pursuant to K.S.A. 2006 Supp. 38-2342, and amendments thereto. Upon receipt of the motion, the court shall fix a time and place for hearing and provide notice to the movant and to the current custodian and placement of the juvenile offender and to each party to the proceeding. Except as set out in subsection (b), if the court finds by a preponderance of the evidence that the juvenile offender violated a condition of probation or placement, the court may extend or modify the terms of probation or placement or enter another sentence pursuant to K.S.A. 2006 Supp. 38-2361, and amendments thereto, except that a child support order which has been registered under K.S.A. 2006 Supp. 38-2321, and amendments thereto, may only be modified pursuant to K.S.A. 2006 Supp. 38-2321, and amendments thereto.

(b) The court shall not enter an order removing a juvenile from the custody of a parent pursuant to this section unless the court first finds probable cause that: (1)(A) The juvenile is likely to sustain harm if not immediately removed from the home;

(B) allowing the juvenile to remain in home is contrary to the welfare of the juvenile; or

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(C) immediate placement of the juvenile is in the juvenile's best interest; and

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the juvenile from the juvenile's home or that an emergency exists which threatens the safety of the juvenile. The court shall state the basis of each finding in writing.

History: L. 2006, ch. 169, § 68; Jan. 1, 2007.

Source or Prior Law:

38-1666.

38-2369. Sentencing juvenile offenders; placement matrix; placements based on offense committed; aftercare term. (a) For the purpose of committing juvenile offenders to a juvenile correctional facility, the following placements shall be applied by the judge in felony or misdemeanor cases. If used, the court shall establish a specific term of commitment as specified in this subsection, unless the judge conducts a departure hearing and finds substantial and compelling reasons to impose a departure sentence as provided in K.S.A. 2006 Supp. 38-2371, and amendments thereto.

(1) *Violent Offenders.* (A) The violent offender I is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute an off-grid felony. Offenders in this category may be committed to a juvenile correctional facility for a minimum term of 60 months and up to a maximum term of the offender reaching the age of 22 years, six months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of the offender reaching the age of 23 years.

(B) The violent offender II is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute a nondrug level 1, 2 or 3 felony. Offenders in this category may be committed to a juvenile correctional facility for a minimum term of 24 months and up to a maximum term of the offender reaching the age 22 years, six months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of the offender reaching the age of 23 years.

(2) *Serious Offenders.* (A) The serious offender I is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute a nondrug severity level 4, 5 or 6 person felony or a severity level 1 or 2 drug

felony. Offenders in this category may be committed to a juvenile correctional facility for a minimum term of 18 months and up to a maximum term of 36 months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 24 months.

(B) The serious offender II is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute a nondrug severity level 7, 8, 9 or 10 person felony with one prior felony adjudication. Offenders in this category may be committed to a juvenile correctional facility for a minimum term of nine months and up to a maximum term of 18 months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 24 months.

(3) *Chronic Offenders.* (A) The chronic offender I, chronic felon is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute:

(i) One present nonperson felony adjudication and two prior felony adjudications; or

(ii) one present severity level 3 drug felony adjudication and two prior felony adjudications.

Offenders in this category may be committed to a juvenile correctional facility for a minimum term of six months and up to a maximum term of 18 months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 12 months.

(B) The chronic offender II, escalating felon is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute:

(i) One present felony adjudication and either two prior misdemeanor adjudications or one prior person or nonperson felony adjudication;

(ii) one present felony adjudication and two prior severity level 4 drug adjudications;

(iii) one present severity level 3 drug felony adjudication and either two prior misdemeanor adjudications or one prior person or nonperson felony adjudication; or

(iv) one present severity level 3 drug felony adjudication and two prior severity level 4 drug adjudications.

Offenders in this category may be committed to a juvenile correctional facility for a minimum term of six months and up to a maximum term of 18 months. The aftercare term for this offender is set at a

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minimum term of six months and up to a maximum term of 12 months.

(C) The chronic offender III, escalating misdemeanor is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute:

(i) One present misdemeanor adjudication and either two prior misdemeanor adjudications or one prior person or nonperson felony adjudication and two placement failures;

(ii) one present misdemeanor adjudication and two prior severity level 4 drug felony adjudications and two placement failures;

(iii) one present severity level 4 drug felony adjudication and either two prior misdemeanor adjudications or one prior person or nonperson felony adjudication and two placement failures; or

(iv) one present severity level 4 drug felony adjudication and two prior severity level 4 drug felony adjudications and two placement failures.

Offenders in this category may be committed to a juvenile correctional facility for a minimum term of three months and up to a maximum term of six months. The aftercare term for this offender is set at a minimum term of three months and up to a maximum term of six months.

(4) *Conditional Release Violators*. Upon finding the juvenile violated a requirement or requirements of conditional release, the court may:

(A) Subject to the limitations in subsection (a) of K.S.A. 2006 Supp. 38-2366, and amendments thereto, commit the offender directly to a juvenile correctional facility for a minimum term of three months and up to a maximum term of six months. The aftercare term for this offender shall be a minimum of two months and a maximum of six months, or the length of the aftercare originally ordered, which ever is longer.

(B) Enter one or more of the following orders:

(i) Recommend additional conditions be added to those of the existing conditional release.

(ii) Order the offender to serve a period of sanctions pursuant to subsection (f) of K.S.A. 2006 Supp. 38-2361, and amendments thereto.

(iii) Revoke or restrict the juvenile's driving privileges as described in subsection (c) of K.S.A. 2006 Supp. 38-2361, and amendments thereto.

(C) Discharge the offender from the custody of the commissioner, release the commissioner from further responsibilities in the case and enter any other appropriate orders.

(b) As used in this section: (1) "Placement failure" means a juvenile offender in the custody of the juvenile justice authority has significantly failed the terms of conditional release or has been placed out-of-home in a community placement accredited by the commissioner and has significantly violated the terms of that placement or violated the terms of probation.

(2) "Adjudication" includes out-of-state juvenile adjudications. An out-of-state offense, which if committed by an adult would constitute the commission of a felony or misdemeanor, shall be classified as either a felony or a misdemeanor according to the adjudicating jurisdiction. If an offense which if committed by an adult would constitute the commission of a felony is a felony in another state, it will be deemed a felony in Kansas. The state of Kansas shall classify the offense, which if committed by an adult would constitute the commission of a felony or misdemeanor, as person or nonperson. In designating such offense as person or nonperson, reference to comparable offenses shall be made. If the state of Kansas does not have a comparable offense, the out-of-state adjudication shall be classified as a nonperson offense.

(c) All appropriate community placement options shall have been exhausted before a chronic offender III, escalating misdemeanor shall be placed in a juvenile correctional facility. A court finding shall be made acknowledging that appropriate community placement options have been pursued and no such option is appropriate.

(d) The commissioner shall work with the community to provide on-going support and incentives for the development of additional community placements to ensure that the chronic offender III, escalating misdemeanor sentencing category is not frequently utilized.

History: L. 2006, ch. 169, § 69; Jan. 1, 2007.

Source or Prior Law:

38-16,129.

38-2370. Good time credits; rules and regulations; minimum term. (a) For purposes of determining release of a juvenile offender, a system shall be developed whereby good behavior is the expected norm and negative behavior will be punished.

(b) The commissioner shall adopt rules and regulations to carry out the provisions of this section regarding good time calculations. Such rules and

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regulations shall provide circumstances upon which a juvenile offender may earn good time credits through participation in programs which may include, but not be limited to, education programs, work participation, treatment programs, vocational programs, activities and behavior modification. Such good time credits may also include the juvenile offender's willingness to examine and confront the past behavior patterns that resulted in the commission of the juvenile's offense.

(c) If the placement sentence established in K.S.A. 2006 Supp. 38-2369, and amendments thereto, is used by the court, the juvenile offender shall serve no less than the minimum term authorized under the specific category of such placement sentence.

History: L. 2006, ch. 169, § 70; Jan. 1, 2007.

Source or Prior Law:
38-16,130.

38-2371. Departure sentences; hearing; order; findings of fact; limitations. (a) (1) Whenever a person is adjudicated as a juvenile offender, the court upon motion of the state, shall hold a hearing to consider imposition of a departure sentence. The motion shall state that a departure is sought and the reasons and factors relied upon. The hearing shall be scheduled so that the parties have adequate time to prepare and present arguments regarding the issues of departure sentencing. The victim of a crime or the victim's family shall be notified of the right to be present at the hearing for the convicted person by the county or district attorney. The parties may submit written arguments to the court prior to the date of the hearing and may make oral arguments before the court at the hearing. The court shall review the victim impact statement, if available. Prior to the hearing, the court shall transmit to the juvenile offender or the juvenile offender's attorney and the prosecuting attorney copies of the predispositional investigation report.

(2) At the conclusion of the hearing or within 20 days thereafter, the court shall issue findings of fact and conclusions of law regarding the issues submitted by the parties, and shall enter an appropriate order.

(3) If a factual aspect of a crime is a statutory element of the crime, or is used to determine crime severity, that aspect of the current crime of conviction may be used as an aggravating factor only if the criminal conduct constituting that aspect of the current crime of conviction is significantly

different from the usual criminal conduct captured by the aspect of the crime. Subject to this provision, the nonexclusive lists of aggravating factors provided in subsection (c)(2) of K.S.A. 21-4716, and amendments thereto, and in subsection (a) of K.S.A. 21-4717, and amendments thereto, may be considered in determining whether substantial and compelling reasons exist.

(b) If the court decides to depart on its own volition, without a motion from the state, the court must notify all parties of its intent and allow reasonable time for either party to respond if they request. The notice shall state that a departure is intended by the court and the reasons and factors relied upon.

(c) In each case in which the court imposes a sentence that deviates from the presumptive sentence, the court shall make findings of fact as to the reasons for departure regardless of whether a hearing is requested.

(d) If the sentencing judge departs from the presumptive sentence, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure. When a departure sentence is appropriate, the sentencing judge may depart from the matrix as provided in this section. When a sentencing judge departs in setting the duration of a presumptive term of imprisonment:

(1) The presumptive term of imprisonment set in such departure shall not total more than double the maximum duration of the presumptive imprisonment term;

(2) the court shall have no authority to reduce the minimum term of confinement as defined within the placement matrix; and

(3) the maximum term for commitment of any juvenile offender to a juvenile correctional facility is age 22 years, 6 months.

(e) A departure sentence may be appealed as provided in K.S.A. 2006 Supp. 38-2380, and amendments thereto.

History: L. 2006, ch. 169, § 71; Jan. 1, 2007.

Source or Prior Law:
38-16,132.

38-2372. Computation of sentence. In any action pursuant to the revised Kansas juvenile justice code in which the juvenile is adjudicated upon a plea of guilty or trial by court or jury or upon completion of an appeal, the judge, if sentencing the juvenile to incarceration, shall direct that, for the purpose of

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computing juvenile's sentence and release, eligibility and conditional release dates thereunder, that such sentence is to be computed from a date, to be specifically designated by the court in the sentencing order. Such date shall be established to reflect and shall be computed as an allowance for the time which the juvenile has spent incarcerated pending the disposition of the juvenile's case. In recording the date of commencement of such sentence, the date as specifically set forth by the court shall be used as the date of sentence and all good time calculations authorized by law are to be allowed on such sentence from such date as though the juvenile were actually incarcerated in a juvenile correctional facility. Such credit shall not reduce the minimum term of incarceration authorized by law for the offense of which the juvenile has been adjudicated.

History: L. 2006, ch. 169, § 72; Jan. 1, 2007.

Source or Prior Law:
38-16,133.

38-2373. Commitment to juvenile correctional facility; transfers. (a) *Actions by the court.* (1) When a juvenile offender has been committed to a juvenile correctional facility, the clerk of the court shall forthwith notify the commissioner of the commitment and provide the commissioner with a certified copy of the complaint, the journal entry of the adjudication and sentencing. The court shall provide those items from the social file which could relate to a rehabilitative program. If the court wishes to recommend placement of the juvenile offender in a specific juvenile correctional facility, the recommendation shall be included in the sentence. After the court has received notice of the juvenile correctional facility designated as provided in subsection (b), it shall be the duty of the court or the sheriff of the county to deliver the juvenile offender to the facility at the time designated by the commissioner.

(2) When a juvenile offender is residing in a juvenile correctional facility and is required to go back to court for any reason, the county demanding the juvenile's presence shall be responsible for transportation, detention, custody and control of such offender. In these cases, the county sheriff shall be responsible for all transportation, detention, custody and control of such offender.

(b) *Actions by the commissioner.* (1) Within three days after receiving notice of commitment as

provided in subsection (a), the commissioner shall notify the committing court of the facility to which the juvenile offender should be conveyed, and when to effect the immediate transfer of study and control to the juvenile justice authority. The date of admission shall be no more than five days after the notice to the committing court. Until received at the designated facility, the continuing detention, custody, and control of and transport for a juvenile offender sentenced to a direct commitment to a juvenile correctional facility shall be the responsibility of the committing county.

(2) Except as provided by K.S.A. 2006 Supp. 38-2332, and amendments thereto, the commissioner may make any temporary out-of-home placement the commissioner deems appropriate pending placement of the juvenile offender in a juvenile correctional facility, and the commissioner shall notify the court, local law enforcement agency and school district in which the juvenile will be residing if the juvenile is still required to attend a secondary school of that placement.

(c) *Transfers.* During the time a juvenile offender remains committed to a juvenile correctional facility, the commissioner may transfer the juvenile offender from one juvenile correctional facility to another.

History: L. 2006, ch. 169, § 73; Jan. 1, 2007.

Source or Prior Law:
38-1671.

38-2374. Same; conditional release; procedure; supervision; notification; aftercare services. (a) When a juvenile offender has satisfactorily completed the term of incarceration at the juvenile correctional facility to which the juvenile offender was committed or placed, the person in charge of the juvenile correctional facility shall have authority to release the juvenile offender under appropriate conditions and for a specified period of time. Prior to release from a juvenile correctional facility, the commissioner shall consider any recommendations made by the juvenile offender's community case management officer.

(b) At least 20 days prior to releasing a juvenile offender as provided in subsection (a), the person in charge of the juvenile correctional facility shall notify the committing court of the date and conditions upon which it is proposed the juvenile offender is to be released. The person in charge of the juvenile correctional facility shall notify the school district in which the juvenile offender will be

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residing if the juvenile is still required to attend a school. Such notification to the school shall include the name of the juvenile offender, address upon release, contact person with whom the juvenile offender will be residing upon release, anticipated date of release, anticipated date of enrollment in school, name and phone number of case worker, crime or crimes of adjudication if not confidential based upon other statutes, conditions of release and any other information the commissioner deems appropriate. To ensure the educational success of the student, the community case manager or a representative from the residential facility where the juvenile offender will reside shall contact the principal of the receiving school in a timely manner to review the juvenile offender's case. If such juvenile offender's offense would have constituted an off-grid crime, nondrug felony crime ranked at severity level 1, 2, 3, 4 or 5, or a drug felony crime ranked at severity level 1, 2 or 3, on or after July 1, 1993, if committed by an adult, the person in charge of the juvenile correctional facility shall notify the county or district attorney of the county where the offender was adjudicated a juvenile offender of the date and conditions upon which it is proposed the juvenile offender is to be released. The county or district attorney shall give written notice at least five days prior to the release of the juvenile offender to: (1) Any victim of the juvenile offender's crime who is alive and whose address is known to the court or, if the victim is deceased, to the victim's family if the family's address is known to the court; and (2) the local law enforcement agency. Failure to notify pursuant to this section shall not be a reason to postpone a release. Nothing in this section shall create a cause of action against the state or county or an employee of the state or county acting within the scope of the employee's employment as a result of the failure to notify pursuant to this section.

(c) Upon receipt of the notice required by subsection (b), the court shall review the terms of the proposed conditional release and may recommend modifications or additions to the terms.

(d) If, during the conditional release, the juvenile offender is not returning to the county from which committed, the person in charge of the juvenile correctional facility shall also give notice to the court of the county in which the juvenile offender is to be residing.

(e) To assure compliance with conditional release from a juvenile correctional facility, the

commissioner shall have the authority to prescribe the manner in which compliance with the conditions shall be supervised. When requested by the commissioner, the appropriate court may assist in supervising compliance with the conditions of release during the term of the conditional release. The commissioner may require the parent of the juvenile offender to cooperate and participate with the conditional release.

(f) For acts committed before July 1, 1999, the juvenile justice authority shall notify at least 45 days prior to the discharge of the juvenile offender the county or district attorney of the county where the offender was adjudicated a juvenile offender of the release of such juvenile offender, if such juvenile offender's offense would have constituted a class A, B or C felony before July 1, 1993, or an off-grid crime, a nondrug crime ranked at severity level 1, 2, 3, 4 or 5 or a drug crime ranked at severity level 1, 2 or 3, on or after July 1, 1993, if committed by an adult. The county or district attorney shall give written notice at least 30 days prior to the release of the juvenile offender to: (1) Any victim of the juvenile offender's crime who is alive and whose address is known to the court or, if the victim is deceased, to the victim's family if the family's address is known to the court; and (2) the local law enforcement agency. Failure to notify pursuant to this section shall not be a reason to postpone a release. Nothing in this section shall create a cause of action against the state or county or an employee of the state or county acting within the scope of the employee's employment as a result of the failure to notify pursuant to this section.

(g) Conditional release programs shall include, but not be limited to, the treatment options of aftercare services.

History: L. 2006, ch. 169, § 74; Jan. 1, 2007.

Source or Prior Law:
38-1673.

(Effective 05/24/07, see SB 166, sec. 8)

38-2375. Same; conditional release; failure to obey; authorized dispositions. If it is alleged that a juvenile offender who has been conditionally released from a juvenile correctional facility has failed to obey the specified conditions of release, any officer assigned to supervise compliance with the conditions of release or the county or district attorney may file a report with the committing court or the court of the county in which the juvenile

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offender resides describing the alleged violation. The court shall provide copies of the report to the parties to the proceedings. The court, upon the court's own motion or the county or district attorney, shall set the matter for hearing. The movant shall provide notice of the motion and hearing to each party to the proceeding and the current custodian and placement of the juvenile offender. If the court finds that a condition of release has been violated, the court may modify or impose additional conditions of release that the court considers appropriate or order that the juvenile offender be returned to the juvenile correctional facility to serve the conditional release revocation incarceration and aftercare term set by the court pursuant to the placement matrix as provided in K.S.A. 2006 Supp. 38-2369, and amendments thereto.

History: L. 2006, ch. 169, § 75; Jan. 1, 2007.

Source or Prior Law:
38-1674.

38-2376. Same; discharge from commitment; notification. (a) When a juvenile offender has reached the age of 23 years or has completed the prescribed terms of incarceration at a juvenile correctional facility, together with any conditional release following the program, the juvenile shall be discharged by the commissioner from any further obligation under the commitment unless the juvenile was sentenced pursuant to an extended jurisdiction juvenile prosecution upon court order and the commissioner transfers the juvenile to the custody of the secretary of corrections. The discharge shall operate as a full and complete release from any obligations imposed on the juvenile offender arising from the offense for which the juvenile offender was committed.

(b) At least 45 days prior to the discharge of the juvenile offender, the juvenile justice authority shall notify the court and the county or district attorney of the county where the offender was adjudicated a juvenile offender of the pending discharge of such juvenile offender, the offense would have constituted a class A, B or C felony before July 1, 1993, or an off-grid crime, a nondrug crime ranked at severity level 1, 2, 3, 4 or 5 or a drug crime ranked at severity level 1, 2 or 3, on or after July 1, 1993, if committed by an adult. The county or district attorney shall give written notice at least 30 days prior to the discharge of the juvenile offender

pursuant to K.S.A. 2006 Supp. 38-2379, and amendments thereto.

History: L. 2006, ch. 169, § 76; Jan. 1, 2007.

Source or Prior Law:
38-1675.

38-2377. Notification of pending release; hearing; maximum term of imprisonment. (a) The commissioner shall notify the county or district attorney, the court, the local law enforcement agency and the school district in which the juvenile offender will be residing of such pending release at least 45 days before release if the juvenile is still required to attend school, if the juvenile offender has committed an act prior to July 1, 1999, which, if committed by a person 18 years of age or over, would have constituted: (1) A class A or B felony, before July 1, 1993, or (2) an off-grid crime, a nondrug crime ranked at severity level 1, 2, 3, 4 or 5 or a drug crime ranked at severity level 1, 2 or 3, if the offense was committed on or after July 1, 1993, and, if such juvenile is to be released. The county or district attorney shall give written notice at least 30 days prior to discharge of the juvenile offender pursuant to K.S.A. 2006 Supp. 38-2379, and amendments thereto. The county attorney, district attorney or the court on its own motion may file a motion with the court for a hearing to determine if the juvenile offender should be retained in the custody of the commissioner, pursuant to K.S.A. 2006 Supp. 38-2376, and amendments thereto. The court shall fix a time and place for hearing and shall notify each party of the time and place.

(b) Following the hearing if the court orders the commissioner to retain custody, the juvenile offender shall not be held in a juvenile correctional facility for longer than the maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which the juvenile offender has been adjudicated to have committed.

(c) As used in this section, "maximum term of imprisonment" means the greatest maximum sentence authorized by K.S.A. 21-4501, and amendments thereto, applying any enhanced penalty which would be applicable under K.S.A. 21-4504, and amendments thereto, and computing terms as consecutive when required by K.S.A. 21-4608, and amendments thereto.

History: L. 2006, ch. 169, § 77; Jan. 1, 2007.

Source or Prior Law:

38-1676.

38-2378. School district involvement in discharge plan. The commissioner and the school district in which a juvenile offender will be residing shall plan for the juvenile offender's release or discharge if the juvenile offender is required to attend school. The commissioner shall send the educational records for the juvenile and notice of the offenses the juvenile committed to the school district that the juvenile will be attending.

History: L. 2006, ch. 169, § 78; Jan. 1, 2007.

Source or Prior Law:

38-1677.

38-2379. Written notice by county or district attorney. (a) When a statute requires that the county or district attorney shall give written notice at least 30 days prior to the release of the juvenile offender, such notice shall be given to:

(1) Any victim of the juvenile offender's crime who is alive and whose address is known to the court or, if the victim is deceased, to the victim's family if the family's address is known to the court;

(2) the local law enforcement agency; and

(3) the school district in which the juvenile offender will be residing if the juvenile is still required to attend school.

(b) Failure to notify pursuant to this section shall not be a reason to postpone a release. Nothing in this section shall create a cause of action against the state or county of an employee of the state or county acting within the scope of the employee's employment as a result of the failure to notify pursuant to this section.

History: L. 2006, ch. 169, § 79; Jan. 1, 2007.

Source or Prior Law:

38-1673, 38-1675.